

JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD R. COSS, JR., : CIVIL ACTION NO. 1:CV-01-0878
PETITIONER, : (Judge Caldwell)
Vs. : (Magistrate Judge Blewitt)
:
JAMES P. MORGAN, ET AL., :
RESPONDENTS. :

FILED
HARRISBURG

JUL 10 2001

MARY E. D'ANDREA, CLERK
Per _____
DEPUTY CLERK

PETITIONER'S OBJECTIONS TO MAGISTRATE BLEWITT'S
ORDER DATED JUNE 28, 2001 CONSTRUING PETITIONER'S LETTER AS A DISMISSAL

AND NOW COMES the Petitioner, Edward R. Coss, Jr., via Pro se, who avers the following forthwith:

1. The Petitioner filed with this court on or about May 17, 2001 an action pursuant to 28 USC §2254.
2. Petitioner filed an application with the clerk of judicial records of Lackawanna County to restore his direct appellate rights nunc pro tunc on June 4, 2001.
3. Petitioner on or about June 6, 2001 received a time-stamped copy of an application filed with the clerk of judicial records Lackawanna County seeking direct appeal rights to be reinstated nunc pro tunc.
4. Petitioner realized after filing his 2254 Petition with this court that the application was a remedy needed to be exhausted in the State Judicial Process.
5. Petitioner is under the belief that he can resolve this matter either through the pending application or the PCRA that has been pending for fourteen (14) years.

6. Petitioner decided that on June 21, 2001 that he would request the same relief that was granted in the matter of Lepre v. Comm. of PA, et al. by the Honorable Judge Kosik "administratively closing his action without prejudice until his state remedies are exhausted." See Exhibit "A" made part hereof and incorporated herein by reference.

7. Petitioner is somewhat confused on how Judge Blewitt "CONSTRUED" his letter as a request under 41(a)(2) to dismiss the action in its entirety he currently objects to that order as at no time did the Petitioner request that his 2254 Petition be dismissed.

8. Petitioner simply requested administrative closure without prejudice and if this avenue is not available as it was in the case of Lepre then Petitioner respectfully requests that he be allowed to withdraw his request for administrative closure without prejudice.

9. Petitioner was simply attempting to save judicial resources for this Honorable Court and Lackawanna County.

10. Petitioner believes that this matter could be resolved in state court, but, at no time did he request dismissal under Rule 41(a)(2).

WHEREFORE, Petitioner requests that the Honorable Judge Caldwell review the Petitioner's letter (Listed as Exhibit "B" made part hereof and incorporated herein by reference) and determine if the Petitioner is entitled to have his action "administratively closed without prejudice" with the option or reopening the action once state remedies are exhausted.

Petitioner respectfully requests also that if this same relief that the Honorable Judge Kosik Ordered in the matter of Lepre is not available to Petitioner that the Honorable Court disregard Petitioner's letter of June 21, 2001 and void Judge Blewitt's Order of June 28, 2001 and Order a new date for the Repondent's to file their response to Petitioner's 2254 Petition.

I, declare under the penalty of perjury the forgoing is true and correct.

Respectfully submitted,

Edward R. Coss, Jr.
Edward R. Coss, Jr., CB 5970
SCI Smithfield
P.O. Box 999, 1120 Pike Street
Huntingdon, Pennsylvania 16652

Executed this 3rd day of July, 2001.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAM J. NEALON FEDERAL BLDG. & U.S. COURTHOUSE
235 N. WASHINGTON AVE., P.O. BOX 856
SCRANTON, PA 18501-0856

EDWIN M. KOSIK
JUDGE

4
5/25/01
TEL (570) 207-5771
FAX (570) 207-5772

May 25, 2001

Gerald S. Lepre, Jr.
Reg. No. DP 7735
SCI-Smithfield
P.O. Box 999
1120 Pike Street
Huntingdon, PA 16652-0999

FILED
SCRANTON

MAY 25 2001

**Re: *Lepre v. Commonwealth of PA, et al.*
*MDPA, Civil No. 3:CV-01-0830***

PER
DEPUTY CLERK

Dear Mr. Lepre:

I am in receipt of your letter dated May 17, 2001. While I recognize your frustration with the state court system, as we indicated in our Order of May 14, 2001, the Superior Court of Pennsylvania in its Memorandum of April 16, 2001 specifically retained jurisdiction over your direct appeal. Therefore, your action in this court was administratively closed without prejudice for you to reopen the action at the conclusion of the state court proceedings. We stand by our previous Order.

Sincerely yours,



Edwin M. Kosik
United States District Judge

EMK:mmmb

Edward R. Coss, Jr., CB 5970
SCI Smithfield
P.O. Box 999, 1120 Pike Street
Huntingdon, Pennsylvania 16652(0999)

June 21, 2001

Judge William W. Caldwell
US District Court
228 Walnut Street
P.O. Box 983
Harrisburg, Pennsylvania 17108

Re: Coss v. Morgan

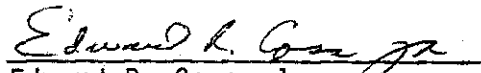
Dear Judge Caldwell:

You are the Judge currently assigned to my Habeas Corpus Petition pursuant to §2254.

I was writing to you in regards to administratively closing this case without prejudice in order that I re-open the case after my state remedies are exhausted. I do currently have an Application filed to restore my right to a direct appeal in Lackawanna County in front of the Honorable Judge Cottone. I wish to close this case until I exhaust my remedies on the Application.

Please contact me concerning the above as soon as possible.

Very truly yours:


Edward R. Coss, Jr.

ERCJ/

C: File

Magistrate Thomas M. Blewitt
Andrew J. Jarbola, DA
William P. O'Malley, ADA
Judge S. John Cottone
William P. Rinaldi, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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Petitioner	:	(Judge Caldwell)
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v.	:	(Magistrate Judge Blewitt)
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JAMES P. MORGAN, et al.,	:	
	:	
Respondents	:	

**FILED
SCRANTON**

JUN 28 2001

ORDER

PER JVS
DEPUTY CLERK

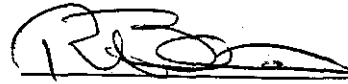
THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The Petitioner, an inmate at the State Correctional Institution at Huntingdon Pennsylvania, filed this action pursuant to 28 U.S.C. §2254 on May 17, 2001. On June 26, 2001 the Petitioner filed a letter with the Court wherein he requests that the matter be withdrawn. (Doc 5).

tr
AND NOW THIS 28 day of June, 2001, IT IS HEREBY ORDERED THAT:

1. The Petitioner's filing of June 26, 2001, (Doc. 5) is hereby construed as a Request for Dismissal of this action.
2. Said request is hereby **GRANTED**.
3. Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, this action is dismissed.
4. The Clerk of Court is directed to provide a copy of this Order to all parties to this action.

5. The Clerk of Court is directed to note the docket of this case accordingly.

A handwritten signature in black ink, appearing to read 'T. M. Blewitt', written over a horizontal line.

THOMAS M. BLEWITT
United States Magistrate Judge

Dated: June 28, 2001